APPENDIX A.

LIBEL CASES IN WHICH CERTIORARI HAS BEEN DENIED:

1951-1952 Term:

Mitchell v. Tribune Company, 342 U. S. 919;
Moore-McCormack Lines v. Foltz, 342 U. S. 871;
Paducah Newspapers v. Wise, 343 U. S. 942;
Winrod v. McFadden Publications, 342 U. S. 814.

1952-1953 Term:

Watwood v. Stone's Mercantile Agency, 344 U. S. 821;
Jefferson v. Chronicle Publishing Company, 344 U. S. 803;
Scott Publishing Co. v. Gaffney, 345 U. S. 992;
Mims v. Metropolitan Life Insurance Co., 345 U. S. 940;
Western Union Telegraph Co. v. Lesesne, 344 U. S. 896.

1953-1954 Term:

Bradley Mining Co. v. Boice, 346 U. S. 874;
Johns v. Associated Aviation Underwriters, 346 U. S. 834;
Reserve Life Insurance Co. v. Simpson, 346 U. S. 899;
Pearson v. Gariepy, 346 U. S. 909.

1954-1955 Term:

McCullagh v. Houston Chronicle Publishing Co., 348 U. S. 827;
Vaughan v. Brandon, 348 U. S. 836;
Donaducy v. Pennsylvania, 349 U. S. 913 (appeal dismissed).

1955-1956 Term:

Brooks v. Jack's Cookie Co., 351 U. S. 908;
Scott Publishing Co. v. Owens, 350 U. S. 968;

Hammett v. Times-Herald, Inc., 350 U. S. 996;
Pegler v. Reynolds, 350 U. S. 846.

1956-1957 Term:

Stover v. Central Broadcasting Co., 352 U. S. 1016;
Ginsburg v. Black, 353 U. S. 911;
Krebiozen Research Foundation v. Beacon Press, Inc., 352 U. S. 848;
Columbia Pictures Corp. v. Stephens, 353 U. S. 949.

1957-1958 Term:

Texas Plastics v. Rotolith, 356 U. S. 957;
Afro-American Co. v. Owen, 355 U. S. 914.

1958-1959 Term:

Pond v. General Electric Co., 358 U. S. 818;
Torre v. Garland, 358 U. S. 910.

1959-1960 Term:

Lamb v. Sutton, 363 U. S. 830;
Kemart Corp. v. Printing Arts, Inc., 361 U. S. 893.

1960-1961 Term:

Adams v. West, 365 U. S. 845;
Roberts v. Love, 364 U. S. 825;
Curtis Publishing Co. v. Vaughan, 364 U. S. 822;
Sauber v. Gliedman, 366 U. S. 906;
Snakard v. Frankfort Oil Co., 364 U. S. 920.

1961-1962 Term:

Abernathy v. Patterson, 368 U. S. 396;
Whiteside v. Connecticut, 368 U. S. 830;
Hearst Consolidated v. Hope, 368 U. S. 956;
Miami Herald v. Brautigam, 30 U. S. Law Week 3287;
Union Leader v. Chagnon, 369 U. S. 830;
Poss v. Lieberman, 30 U. S. Law Week 3398.

1962-1963 Term to date:

Rhodes v. Star-Herald Co., 31 U. S. Law Week 3117;
Reiling v. Hammerstein, 31 U. S. Law Week 3129;
John v. Tribune Company, 31 U. S. Law Week 3138.

LIBEL CASES IN WHICH CERTIORARI WAS GRANTED DURING SAME PERIOD:

Beauharnais v. Illinois (Illinois group criminal libel statute upheld), 343 U. S. 250;
Barr v. Matteo (absolute privilege accorded to statements of federal executive officials), 360 U. S. 564;
Howard v. Lyons (absolute privilege accorded to statements of federal executive officials), 360 U. S. 593;
Farmers' Union v. WDAY, Inc. (Sec. 315 of Federal Communications Act gives immunity from libel suits when equal time to political candidates afforded thereunder), 360 U. S. 525.

APPENDIX B.

The following are excerpts from the transcript of the trial testimony containing questions and statements by counsel for the New York Times:

1. "Q. As a matter of fact, Mr. Blackwell, while you were talking about what was set out in this ad, isn't it a matter of common knowledge in and around Montgomery that what we have been reading from this ad is not true and don't most people know that it is not true?

A. Yes, sir. They know it is not true" (R. 1745).

2. "Mr. Embry: Your Honor, we also want to object on the further grounds that we have not made the issue by putting on testimony as to the affirmative truth of these statements and until that is done they have no right to call a witness to show that it is presumably false under the allegation" (R. 1749).

3. "Q. You didn't believe it to be true when you read it, did you, Mr. Kaminsky? After Mr. Nachman showed it to you——

A. No. I don't think Commissioner Sullivan would do that. I didn't think that" (R. 1758).

4. "Q. Now, you didn't believe anything in there referring to Mr. Sullivan charging him with—first of all, you didn't believe anything in that ad when Mr. Nachman showed it to you, did you, or that it was true——

A. I didn't believe it about him. No, sir" (R. 1764).

5. "Q. You didn't believe that statement you just read that Mr. Nachman showed you—you didn't believe that it was true, did you?

A. I knew it wasn't true. I satisfied myself about that.

Q. You never thought it was true or had any idea that it was true, did you?

A. No, sir, but if I had known it was true——" (R. 1767-1768).

6. "Q. You didn't believe anything in that ad, did you?

A. No, sir, I don't" (R. 1772).

7. "Q. You didn't believe that was true, did you?

A. No, sir.

Q. You didn't believe that Commissioner Sullivan had ordered any of the police to do anything wrong, did you?

A. No, sir, I didn't.

Q. Or to intimidate anybody?

A. No, sir.

Q. You didn't believe that Commissioner Sullivan had ordered any of the police or anyone else to assault the person of any other person, did you?

A. No, sir, I didn't" (R. 1789).

8. "Q. Lieutenant, the police aren't in the habit of going around and throwing bombs, are they?

A. No, sir.

Q. And nobody around here ever believed that they did, did they?

A. Well, we were told we were.

Q. Your job was to investigate in an attempt to determine to find out who had done that, wasn't it?

A. That is correct.

Q. And your job, Lieutenant, was to apprehend them and prosecute them for that, wasn't it?

A. Right" (R. 1810-1811).

9. "Q. (By respondent's counsel) I call your attention, Mr. Sullivan, to the third paragraph in the left-hand column of this ad, which reads as follows: 'In Montgomery, Alabama, after students sang "My Country 'Tis of Thee"

on the State Capitol steps, their leaders were expelled from school and truckloads of police armed with shotguns and tear gas ringed the Alabama State College Campus.' I ask you if that statement is true or false?

Mr. Embry: We object to that, Your Honor. It calls for a conclusion on the part of the witness and it invades the province of the jury and there is no foundation laid for that question——

The Court: I will overrule the objection and give you an exception.

The Witness: That statement is——

Mr. Embry: Just a minute. We assign all of the other grounds, Your Honor, that we——

Mr. Nachman: Everything that you can to——

Mr. Embry: Everything in regard to the series of witnesses who testified as to their opinion as to what they thought from the ad or associated in their minds and we assign the same series of grounds that we assigned when we objected before and that it is not framed within the issues of the case——

Mr. Nachman: We will stipulate that counsel can assign in the Record any objections now made and any objections that may occur to them later if that is agreeable?

Mr. Embry: Yes, that's what I——

• • • Mr. Embry: **And specifically, that the truth or falsity of it is not in issue.**

Q. You may answer the question, sir.

A. The statement in question is in my opinion completely false and I resented it very much when I read the fact that it had been made" (R. 1829-1830). (Emphasis supplied.)

10. "Q. (By respondent's counsel) The question was, that there has been a change in the position of The Times since April 15th, 1960, namely, that at that time they said these other statements were 'substantially correct' and now you say on behalf of The Times that The Times is uncertain whether those statements are substantially correct.

Mr. Embry: We object to that——

The Court: Same ruling.

Mr. Embry: We except——

Mr. Nachman: Is that a fair summary of your testimony on this point?

The Witness: Well, it is awfully difficult to define what The Times thinks. This letter is signed by Lord, Day and Lord, our general counsel, and they said that after their investigation it would seem to indicate that the statements were substantially correct.

By Mr. M. R. Nachman, Jr. (continuing):

Q. What does The New York Times say? They are one of the defendants in this case. Does The Times say it is substantially correct or not?

Mr. Embry: Your Honor, we object to that. This is not within the pleadings in this case——

The Court: What was the question?

Mr. Nachman: Your Honor, we are calling on the man here who is here as spokesman for this defendant corporation. We are asking him to state to this Court and to this jury here and now whether they say these statements are true or whether they say these statements are false. This is a libel suit and we say they are false. Now, if the defendant, The New York Times, wants to admit that they are false, then we will not ask any more questions about it and Mr. Embry keeps saying it is not an issue, it is not an issue, but if he wants to admit that the statements are false——

Mr. Embry: Your Honor, I am going to ask that you restrict the attorney from making a jury argument as he has been doing here throughout the course of this trial. Now, I have tried to restrain my temper, but it is so obviously improper, Your Honor, that it violates——

Mr. Nachman: Your Honor, I am trying to——

Mr. Embry: Just a minute, sir.

Mr. Nachman: I beg your pardon. Go ahead.

Mr. Embry: Now, Your Honor knows and, of course, Mr. Nachman knows that that is an improper question. Those are things that the jurors decide from all of the facts that are before them and not from the opinions of any——

The Court: Well, he is the Secretary of the corporation and I think the question is good. Let me give you an exception.

Mr. Embry: "We except" (R. 1910-1911). (Emphasis supplied.)

APPENDIX C.

Title 7, Section 909 of the Code of Alabama:

"TRUTH OF THE WORDS, ETC., EVIDENCE UNDER THE GENERAL ISSUE.—In all actions of slander or libel, the truth of the words spoken or written, or the circumstances under which they were spoken or written, may be given in evidence under the general issue in mitigation of the damages."

Truth specially pleaded is an absolute bar to a civil libel action, **Webb v. Gray**, 181 Ala. 408, 62 So. 194; **Ripps v. Herrington**, 241 Ala. 209, 212, 1 So. 2d 899; **Johnson Publishing Co. v. Davis**, 271 Ala. 474, 124 So. 2d 441.

Title 7, Section 910 of the Code of Alabama:

"LIBEL OR SLANDER; DEFAMATORY MATTER.—In an action for libel or slander, it shall be sufficient to state, generally, that the defamatory matter was published or spoken of the plaintiff; and if the allegation be denied, the plaintiff must prove, on the trial, the facts showing that the defamatory matter was published or spoken of him."

Title 7, Section 913 of the Code of Alabama:

"RETRACTION MITIGATES DAMAGES.—The defendant in an action of slander or libel may prove under the general issue in mitigation of damages that the charge was made by mistake or through inadvertence, and that he has retracted the charge and offered amends before suit by publishing an apology in a newspaper when the charge had been thus promulgated, in a prominent position; or verbally, in the presence of witnesses, when the accusation was verbal or written, and had offered to certify the same in writing."

Title 7, Section 914 of the Code of Alabama:

"AGGRIEVED PERSON MUST GIVE NOTICE TO PUBLISHERS OF ALLEGED LIBEL BEFORE VINDICTIVE DAMAGES CAN BE RECOVERED.—Vindictive or punitive damages shall not be recovered in any action for libel on account of any publication concerning the official conduct or actions of any public officer, or for the publication of any matter which is proper for public information, unless five days before the bringing of the suit the plaintiff shall have made written demand upon the defendant for a public retraction of the charge or matter published; and the defendant shall have failed or refused to publish within five days in as prominent and public a place or manner as the charge or matter published occupied, a full and fair retraction of such charge or matter."

Title 7, Section 915 of the Code of Alabama:

"WHEN ACTUAL DAMAGES ONLY RECOVERABLE.—If it shall appear on the trial of an action for libel that an article complained of was published in good faith, that its falsity was due to mistake and misapprehension, and that a full correction or retraction of any false statement therein was published in the next regular issue of said newspaper, or in case of daily newspapers, within five days after service of said notice aforesaid, in as conspicuous a place and type in said newspaper as was the article complained of, then the plaintiff in such case shall recover only actual damages."

Title 7, Section 916 of the Code of Alabama:

"RECANTATION AND TENDER; EFFECT OF.—If the Defendant, after or before suit brought, make the recantation and amends recited in the preceding sections, and also tender to the plaintiff a compensation in money, and bring the same into court, the plaintiff can recover no costs, if the jury believe and find the tender was sufficient."

Title 7, Section 917 of the Code of Alabama:

"Effect of Tender Received.—The receipt of the money tendered, if before suit brought, is a bar to the action; if after suit, releases the defendant from all damages and costs, except the costs which accrued before the tender and receipt of the money."